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European Parliament
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Ms Ditte Juul Jørgensen
Director-General
Directorate-General for Energy
European Commission
Rue de Mot 24
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Subject: Joint energy associations call for back-up disclosure channels to enable effective risk management by energy firms

Dear Ms Jiménez, dear Ms Carvalho, dear Ms Jørgensen,

We the Joint Energy Associations Group (JEAG) BDEW, EFET, Eurelectric, Eurogas, IOGP Europe and VKU as well as CMCE, as representatives of a wide range of market participants, are contacting you

with regard to the disclosure of inside information under the revised Regulation on Wholesale Energy Market Integrity and Transparency (REMIT II).

As you know, our associations fully support the objectives of market integrity and transparency of REMIT II as a sector-specific regime.

In particular, we welcome that the disclosure of inside information through Inside Information Platforms (IIPs) will be regulated by the new REMIT II framework, since IIPs are an essential infrastructure and service provider for market participants. We understand and support the reasons for the centralisation of the disclosure of inside information through IIPs, i.e., the creation of EU-wide transparency about relevant inside information.

However, we believe that, in case of an IIP outage, this centralised approach exposes energy firms to a risk of non-compliance with the REMIT II market integrity and transparency regime, since they cannot anymore publish their inside information and need to avoid to breach the insider dealing prohibition. A breach of this prohibition can lead to the imposition of substantial administrative and criminal sanctions for firms and their staff.

Consequently, this centralized disclosure approach forces energy firms to immediately stop their risk management and balancing activities on the wholesale energy markets for the duration of the IIP outage, meaning that they are not able to manage their energy price risks and cannot balance their production and supply portfolio. This will have unintended material adverse effects on energy firms and end consumers and will ultimately endanger the security of supply and increase energy costs. We explain these unintended consequences in more detail below.

Therefore, market participants have expressed substantial concerns about the absence of provisions ensuring the effective disclosure of inside information in exceptional and temporary cases where IIPs might be unavailable due to cyberattacks, power outages or other IT issues.

JEAG therefore supports the intention of the European Parliament's Recital 11 to allow market participants to publish inside information exceptionally through other channels during IIP failures, as a measure of last resort. This provision should be introduced into the main body of the Regulation to create legal certainty for market participants. We explain our proposal reflecting the sector-specifics in more detail below.

Detailed explanation:

The possibility to disclose inside information at all times is essential for market participants, who need to be able to balance their (intermittent) production portfolio at any time and to mitigate their commercial market price risks on the gas and power markets (hedging). This is only possible without breaching the insider dealing prohibition if they can effectively disclose inside information they possess in a timely manner before they enter into balancing and/or hedging transactions. It is therefore essential – as proposed by the European Parliament in Recital 11 – that they are exceptionally and temporarily allowed to use other available disclosure channels during the adverse event where Inside Information Platforms (IIPs) are unavailable. This could be firms' own back-up solutions, including market participants' websites, or alternative centralised channels to guarantee an effective EU-wide disclosure to the market. Such back-up disclosure channel shall only be used by market participants for the duration of the IIP failure and is hence not a parallel permanent disclosure channel.

Otherwise, the balancing of the supply networks and, hence, the security of supply cannot be guaranteed by market participants. Moreover, market participants could experience considerably financial damages because they can't hedge their market price risks and/or fulfill the contractual obligations: for example, in case of their power production installation(s) fail they usually will have a consequently short position which they need to cover, but they could not procure gas/power on the

wholesale market to cover that short position on time. This can cause significant financial losses because:

- Lack of or delayed hedging usually translates into financial losses.
- Being unbalanced may lead to penalties by TSOs (as it may constitute a breach of the balancing agreement).
- Inability to procure gas/power on wholesale markets can prevent firms from fulfilling their supply obligations towards household or industrial customers.

IIPs already have back-up solutions in place and should be obliged to do this. However, those have been seen as ineffective by market participants in some cases and cannot be guaranteed to work on every occasion. Even if IIPs potentially fail only by a small percentage, this can still amount to several days in a year where market participants would not be able to discharge themselves of the disclosure obligation and hence to publish their inside information. Thus the backup chain for disclosure channels needs to be extended to firms' own back-up solutions such that publication of inside information is possible at all times.

We hope that these points will meet your understanding and remain at your disposal for further explanation of our request.

We thank you for considering our suggested implementation timelines and would be pleased to be given the opportunity to present our reasoning and additional details of our membership surveys in person.

We remain at your disposal for any questions you may have.

Yours sincerely,

On behalf of BDEW, EFET, Eurelectric, Eurogas, IOGP Europe, VKU and CMCE